

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
MYRON JACKSON,)	
)	
Complainant,)	CHARGE NO: 2008SF0471
)	EEOC NO: 21BA72486
and)	ALS NO: S08-0344
)	
)	
NEWLINE HARDWOODS, INC.,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act. On October 2, 2008, an Order was entered, which set this matter for a public hearing on November 10, 2008 on the issue of damages after the Commission had entered an Order finding Respondent to be in default on the issue of liability. Neither party appeared on the scheduled day for the public hearing. On November 10, 2008, an Order was entered directing Complainant to file a report indicating why he was unable to appear at the scheduled public hearing. Complainant has not filed a report explaining his absence from the November 10, 2008 public hearing as of the date of this Recommended Order.

Finding of Fact

Based on the record in this matter, I make the following findings of fact:

1. On August 27, 2007, Complainant filed with the Department of Human Rights a Charge of Discrimination alleging that he was the victim of harassment on account of his race and religion and was terminated from his laborer position on account of his race and religion and in retaliation for complaining about racial and religious

harassment. Complainant also asserted that he was subjected to unequal terms and conditions of employment when Respondent failed to offer him a drug screen or reemployment after he had been accused of smoking marijuana at the worksite.

2. On July 29, 2008, the Department of Human Rights filed with the Human Rights Commission a petition for hearing to determine Complainant's damages due to the default status of Respondent.

3. On September 3, 2008, the Commission found Respondent to be in default due to Respondent's failure to file a proper verified response to the Charge of Discrimination and transferred the matter to the Administrative Law Section for a hearing on damages.

4. On September 8, 2008, an Order was entered which directed the parties to appear at a telephone conference call to set the date for the damages hearing.

5. On October 2, 2008, a telephone conference call was conducted in which only Complainant participated. Complainant agreed to November 10, 2008 as being the date for the public hearing on the issue of damages.

6. On November 10, 2008, neither Complainant nor Respondent appeared at the scheduled public hearing on the issue of damages.

7. On November 10, 2008, an Order was entered, which directed Complainant to file a report indicating why he was unable to appear at the scheduled public hearing on the issue of damages. The Order also cautioned Complainant that the failure to file a report as outlined in the Order or the failure to provide an adequate excuse for not appearing at the public hearing would result in a future order recommending that the default order be confirmed, but that Complainant be denied any damages due to his failure to proceed with his case on the issue of damages.

8. Complainant has not filed a report explaining his absence from the public hearing on the issue of damages as of the date of this Recommended Order.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the provisions of the Human Rights Act.

2. Respondent is an "employer" as that term is defined under section 1-102(B) of the Human Rights Act (775 ILCS 5/2-101(B)) and was subject to the provisions of the Act.

3. As a consequence of the default order entered on September 3, 2008, all of the allegations contained in Complainant's Charge of Discrimination pertaining to Respondent are deemed admitted.

4. As a consequence of the parties' failure to appear at the scheduled public hearing on the issue of damages, as well as Complainant's failure to provide the Commission with any explanation as to why he failed to appear the public hearing on the issue of damages, Respondent should still be held in default on the Charge of Discrimination, but Complainant should receive no damages.

Determination

The Commission should confirm its finding of liability against Respondent due to the entry of the default order, but award Complainant no damages due to his failure to appear at the damages hearing or provide any explanation as to why he failed to appear at said hearing.

Discussion

On September 3, 2008, the Commission entered an Order finding Respondent to be in default on the issue of liability due to its failure to file a proper verified response to the instant Charge of Discrimination. On October 2, 2008, an Order was entered which set the matter for a public hearing on the issue of damages for November 10, 2008. However, neither Complainant nor Respondent appeared at the scheduled public hearing, and an Order was entered which directed Complainant to file a report explaining

why he was not present at the public hearing. Complainant, though, has not filed such a report although the time for doing so has long expired.

Accordingly, because the Complainant has failed to appear at the damages hearing and has not provided an explanation for his absence, it appears that Complainant has abandoned his claim. In analogous situations, the Commission has allowed the default finding to stand, but denied Complainant any damages. See, for example, *Lash and World Travel Agency*, IHRC, 4546, June 10, 1991.

Recommendation

For all of the above reasons, it is recommended that the default order of September 8, 2008 against Respondent stand, but that Complainant receive no damages arising out of the default order.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 4TH DAY OF MAY, 2009